

21 C.J.S. Courts § 176

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

V. Rules of Practice and Procedure

B. Operation and Effect of Court Rules

§ 176. Amendment, repeal, abolition, or rescission of court rules

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

- West's Key Number Digest, [Courts](#)  82, 83






The power to make court rules includes the power to amend them, but the amendment must be made in the prescribed manner; the repeal of a criminal procedural rule by implication is disfavored.

Once rules of court are duly adopted, they remain in force until changed or abrogated,¹ but the power to make rules includes the power to amend them² in the prescribed manner.³ Amendment of a rule raises a presumption of an intent to change the rule.⁴ If the legislature has authority to regulate the practice and procedure in courts, the rules of a court may be amended, rescinded, or repealed by statute.⁵ Supreme court rules can be changed only by the supreme court itself⁶ or by a general act of statewide application.⁷ The state supreme court does not, however, have the prerogative to revive a practice that was once permitted by the state constitution but later repealed.⁸

Custom cannot nullify a formally adopted written rule of procedure,⁹ and a later rule that makes no mention of the matter to which a previous rule of court relates, and which is not inconsistent with the previous rule, does not repeal or modify it.¹⁰ A repeal of a criminal procedural rule by implication is disfavored.¹¹ Generally, amendments to court rules apply prospectively.¹² However, when existing rules of procedure are amended or new rules are added, the court will apply them to pending suits unless it would not be feasible or would work an injustice.¹³ Whether it is "just and practicable" to apply the new version of a rule is necessarily a case-by-case consideration.¹⁴

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Footnotes

- 1 La.—Schwing v. Dunlap, 123 La. 485, 49 So. 134 (1909).
- 2 Wash.—State v. Currie, 200 Wash. 699, 94 P.2d 754 (1939).
- 3 La.—State v. Turner, 178 La. 927, 152 So. 567 (1934).
- 4 Tenn.— Lockett v. Board of Professional Responsibility, 380 S.W.3d 19 (Tenn. 2012).
- 5 Ala.—Ex parte Stewart, 730 So. 2d 1246 (Ala. 1999).
- Neb.—Sorensen v. Grand Island Clinic, 119 Neb. 280, 228 N.W. 601 (1930).
- 6 N.M.—Tafoya v. S & S Plumbing Co., 97 N.M. 249, 1981-NMCA-150, 638 P.2d 1094 (Ct. App. 1981).
- 7 Ala.—Cowin Equipment Co., Inc. v. Robison Mining Co., Inc., 342 So. 2d 910 (Ala. 1977).
- 8 Ala.— King v. Campbell, 988 So. 2d 969 (Ala. 2007).
- 9 U.S.—U. S. v. French, 95 F.2d 922 (C.C.A. 8th Cir. 1938).
- 10 Wash.—Nicktovich v. Olympic Motor Transit Co., 148 Wash. 410, 269 P. 337 (1928).
- 11 U.S.— U.S. v. Vonn, 535 U.S. 55, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002).
- 12 Wyo.— Dean v. State, 2003 WY 128, 77 P.3d 692 (Wyo. 2003).
- 13 N.D.—In re E.R., 2004 ND 202, 688 N.W.2d 384 (N.D. 2004).
- 14 U.S.— U.S. v. Sperrazza, 804 F.3d 1113 (11th Cir. 2015).

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